

**APPLICANT:**  
**Chesaco Properties, LLC**

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**REQUEST: Rezone 11.647 acres**  
**from R1 to B3 District**

**HEARING DATE: May 16, 2007 and**  
**August 1, 2007**

**Consolidated Case Nos.:**  
**126, 127, 128 and 161**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Chesaco Properties, LLC

**LOCATION:** east side of Pine Road, approximately 450 feet south of U.S. Route 40  
(Pulaski Highway), Joppa  
Tax Map: 65 / Grid: 3B  
Parcel 1066 – 0.517 acres (Case No. 126)  
Parcel 155 – 4.13 acres (Case No. 127)  
Parcel 1053 – 5.99 acres (overall Parcel size 8.87 acres) (Case No. 128)  
Parcel 1062 – 1.01 acres (Case No. 161)  
First (1<sup>st</sup>) Election District

**ZONING:** R1 / Urban Residential

**REQUEST:** A request, pursuant to Section 267-12A of the Harford County Code, to rezone 11.647 acres from R1/Urban Residential to B3/General Business District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

Preliminarily, it was requested by the Applicant that these four rezoning applications be consolidated, as they involve parcels in close proximity to one another, for which the same zoning classification is requested, and are under common ownership. The request to consolidate was granted.

For the Applicant first testified Anna Zippilli, who identified herself as a Designer and Project Manager for Bay State Land Services, the engineering firm retained by the Applicant. Ms. Zippilli was responsible for preparing the drawings introduced as Exhibits 14 and 15. Exhibit 14 is a plat of existing features. Ms. Zippilli pointed out that the Applicant currently owns parcels adjoining the subject properties and U.S. Route 40 and accordingly has significant road frontage on U.S. Route 40. The Applicant has its existing shop and showroom on what is noted as Parcel 451.

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Exhibit 15 illustrates the relatively extensive wetlands in the area and on a portion of the property which the Applicant desires to be rezoned. Exhibit 15 also shows the proposed 215 parking spaces and the projected landscape buffer surrounding the subject parcels. Parcel 1053 is encumbered by a Natural Resource District, according to Ms. Zippilli.

The witness explained that the wetland delineation shown on Exhibit 15 is based on record plats of adjoining properties and that an independent, and more recent, wetland delineation has not been performed. She does not know when the wetland delineation as shown on the adjoining plats was prepared.

Ms. Zippilli also explained that her firm had not done impervious surface calculations. A stream runs through several of the Chesaco properties. A tributary is shown on the east side of the property. The witness explained that Parcels 661, 236 and 237, all as shown on Exhibits 14 and 15, are now zoned B3.

Next for the Applicant testified Bill Klutz. Mr. Klutz identified himself as one of the principals of the Applicant, which sells and services recreational vehicles. Chesaco currently owns several parcels in the vicinity of the subject properties. Those parcels are now used for Chesaco's recreational vehicle sales and service business. Mr. Klutz explained that, if the requested rezonings are granted, the business will expand onto the newly zoned B3 parcels.

Mr. Klutz observed that the parcels on Rayner Lane, along U.S. Route 40, are owned by the Holter's, who reside on the west side of Rayner Lane. On the east side of Rayner Lane is located the Holter's propane business.

Mr. Klutz described the history of his business. Chesaco had originally been located in the Middle River area, having been established in 1947. In 1996 the business, by this time being managed by Mr. Klutz, moved to the present location because of demographics, proximity to the Route 40 enterprise zone, available tax credits, and the significant traffic flow along Route 40.

The depth of the parcels along U.S. Route 40 is 300 feet. Because of existing setbacks and their relatively shallow depth, these lots do not afford Chesaco any room to expand, and are not sufficient for its present business operation. The business now utilizes a 14,000 square foot building on Parcel 451. This building is used for both a showroom and for service work. If granted the requested rezoning Mr. Klutz plans to build a structure behind the present showroom/service building on Parcel 1053. This building would be service oriented only. The building now located on Parcel 451 would then be utilized solely as a showroom. Mr. Klutz feels that expansion is necessary in order to continue to provide repair services to his customers. He does not have sufficient room to expand and provide repair services. Over the years the size of recreational vehicles has greatly expanded, which necessitates more room both for parking, storage, showroom space and service space. The present land is simply not sufficient in light of these changing needs.

Chesaco employs 30 full-time employees, and 5-6 part-time employees.

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A further problem with Chesaco's present location is that it utilizes Parcels 661, 236 and 237 for storage. This requires vehicles being moved along U.S. Route 40 from the showroom/service area to the storage parcels which lie further west along Route 40. This presents obvious safety concerns to its operation. U.S. Route 40 is a dangerous road, and moving vehicles along Route 40 is dangerous for his employees.

Mr. Klutz identified the adjoining parcel, to the east, as containing about 188 acres, on which in excess of 200 residential units are planned. The owner of that parcel does not oppose Chesaco's requests. Mr. Klutz also identified various other business owners in the area who have expressed their lack of opposition to the request. Letters from these business owners are in the file. (See Exhibits 18 a-i.)

Mr. Klutz does not believe the proposed rezonings will impact Pine Road. No major entrance will be created on Pine Road, although vehicles may occasionally move up and down the road. However, he sees no increased activity and no adverse impact to Pine Road, particularly if his parcels are properly screened as proposed.

On cross-examination, Mr. Klutz explained that his plan is to put a roadway across Rayner Lane, to the rear of his existing parcels. The roadway will connect Parcel 153 (on which he will be constructing his new service building and parking), and the proposed rezoned parcels, including Parcel 155. However, Mr. Klutz admitted that this land contains extensive wetlands and permits must be obtained. He does not believe this roadway will have any impact on the neighborhood.

Mr. Klutz noted that vehicles are test driven along U.S. Route 40, with a salesperson always in the vehicle with the customer. No back-up alarms are utilized by any vehicle, although he believes the company tow truck does have a back-up alarm.

Chesaco's yard employs an outdoor speaker system. Normal hours are 8:30 a.m. to 8:00 p.m. Monday thru Friday; 9:00 a.m. to 5:00 p.m. on Saturday; and 11:00 a.m. to 4:00 p.m. on Sunday, although no service work is performed on Sunday.

About 75 RV's can be parked on Chesaco's showroom/service lot, and about 50 to 60 can be stored on the storage lots located farther west along Route 40.

Next for the Applicant testified Jacquelyn Magness Seneschal, who was offered and accepted as an expert in land use and land use planning, familiar with Harford County Land Use regulations. Ms. Seneschal explained that the existing lots owned by the Applicant, along with adjoining lots, were originally strip-zoned B3 for a depth of 300 feet from U.S. Route 40. She identified U.S. Route 40 as an arterial highway. These parcels were given B3 zoning in 1957, and have retained that zoning. Some parcels behind the strip-zoned parcels adjoining U.S. Route 40 have, over time, been rezoned to various residential zoning classifications.

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In Ms. Seneschal's opinion, the requested rezoning is consistent with both the Harford County Master Land Use Plan and the Joppa/Joppatowne Community Plan. The parcels are in a designated growth area, and are in the development envelope.

Ms. Seneschal has submitted a report, noted as Applicant's Exhibit 20, which contained her findings. Ms. Seneschal discussed those findings.

Addressing the Harford County Master Land Use Plan, Ms. Seneschal stated that the category within which the subject properties are listed appears to allow a low to medium intensity residential land use. (See Applicant's Exhibit 11.) The subject parcels are located 'right at the edge' of the commercial and residential area as shown on the Land Use Plan. Ms. Seneschal, accordingly, believes that the subject parcels are in a "transitional area". B3, in her opinion, is consistent with the Master Land Use Plan and the Joppa/Joppatowne Community Plan.

The presently zoned B3 properties are clearly within the Edgewood Revitalization District. However, the parcels for which Chesaco seeks rezoning are not within the Revitalization District. Furthermore, the subject parcels are not within the Edgewood Enterprise Zone.

Ms. Seneschal believes a mistake occurred during the last Comprehensive Rezoning in 1997. She believes that the Harford County Council, in 1997, failed to take into account two major characteristics. The map of Parcel 1053 in 1997 did not show the actual extent of the Natural Resource District. The extent of the wetlands only became apparent when the adjoining parcel (referred to as the Stancill Property), on which a wetland delineation was conducted, is examined. Accordingly, the Council was not able to take into account the existence of these wetlands in its Comprehensive Rezoning Process. Ms. Seneschal opined that information concerning wetlands was not then available to anyone in Harford County without a full wetlands delineation.

The second mistake made by the County involved a 300 foot deep B3 strip-zone along U.S. Route 40. This strip-zone was created in 1957. At that time, a 300 foot depth for these parcels was sufficient. However, at that time parking requirements, traffic volumes, and allowable uses required much less land than at present. Today land planners think differently, and plan for increased area requirements, such as that needed by Chesaco. Accordingly, it was a mistake in 1957 to not anticipate these future requirements.

Ms. Seneschal identified Applicant's Exhibit 22 which shows the neighborhood as defined by the Applicant as well as "associated changes".

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The level of improvements and changes in the area is fairly extensive north of Route 40 but not as great south because the strip B3 zoning is much more restricted south of Route 40. Ms. Seneschal believes that additional property, adding more “depth” to the parcels, is necessary in order to meet modern commercial development. A 300 foot depth is not enough to attract modern development. A 300 foot deep property is not sufficient to achieve the development goals which the Route 40 revitalization and redevelopment visions anticipate.

Ms. Seneschal identified changes in the neighborhood as noted on Exhibit 22. Since 1997 many changes have been as a result of the County’s efforts to revitalize the Route 40 and Edgewood area. These changes, in her opinion, represent a substantial change in the character of the neighborhood, and reinforce the commercially redeveloped nature of the area. The changes in the defined neighborhood are evidence of the County’s efforts to revitalize the area. Ms. Seneschal again reiterated that the requested rezonings are consistent with the Joppa/Joppatowne Community Plan.

She does not believe B3 zoning will negatively impact the existing residential uses in the area.

On cross-examination, Ms. Seneschal stated the subject parcels are given a classification of low intensity/residential in the Master Land Use Plan.

A wetland delineation is typically good for 3-5 years. The wetland delineation as performed for the Stancill property was done sometime before May, 2003.

Ms. Seneschal, when asked for the number of rezonings since 1997 for commercial purposes which have taken place in the neighborhood of the subject parcels, identified only issue 081, which was a zoning change to a Commercial District (identified as No. 7 on Exhibit 22).

Ms. Seneschal also agreed that the Master Plan calls for protection and revitalization of older residential neighborhoods. She stated that the Pine Road/Oak Road neighborhood is such a neighborhood.

For the Department of Planning and Zoning next testified Anthony McClune. Mr. McClune described the subject property as defined by the Department. In the Department’s opinion the neighborhood is actually more properly defined as being those properties south of the CSX Railroad, east of Joppa Road, west of Magnolia Road (MD Route 152), and north of the intersection at Joppa Road and Trimble Road.

Mr. McClune explained that the area containing the subject properties is defined as low intensity in the 2004 Harford County Master Land Use Plan.

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In describing the zoning history of the properties, Mr. McClune stated that they were originally zoned agricultural in 1957, and rezoned to R1/Urban Residential in the 1982 Comprehensive Zoning. They retained their R1 zoning classification through both the 1989 and 1997 Comprehensive Zoning reviews. During the 2005 Comprehensive Zoning process, the Applicant requested a B3/General Business District zoning. The County Council voted to approve the change. Of course, this legislation was subsequently vetoed by County Executive Craig.

Mr. McClune and the Department see no substantial change in the neighborhood. All of the development which has occurred in the area is consistent with existing zoning. The development along Route 40 has also been consistent with existing zoning.

In addressing the mistake argument made by the Applicant, Mr. McClune explained that the property is and has been designated as low intensity on Harford County Master Land Use Plans. During its 2004 review of the Harford County Master Land Use Plan, the Council voted to retain the low intensity use on the Master Plan even though an amendment had been proposed to change the category to high intensity.

The U.S. Route 40 Revitalization District includes properties south of CSX and north of Route 40, and property south of Route 40 which actually adjoins Route 40. Accordingly, the Edgewood Revitalization District does not include the subject property.

Mr. McClune and the Department believe the requested zoning is not consistent with the Master Plan.

In addressing the adjoining property, now planned for residential subdivision and use, Mr. McClune states that he knows of no connecting roads between that parcel and the subject property. Plats of the Stancill Property show wetlands on a portion of the subject properties.

Mr. McClune also stated that there has been recent residential development within the Joppa/Joppatowne neighborhood. Furthermore, a substantial residential community exists to the south of the subject property along Pine Road.

In opposition testified Briana Millar of 915 Pine Road. Ms. Millar had taken photographs of various homes within the Pine Road community, located to the rear, or south of the subject property. Those photographs were admitted as Protestant's Exhibit 1.

Ms. Millar takes a bus to school, with the bus stop being located along U.S. Route 40 at Pine Road. Younger students also take public buses from that location.

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Next testified Cheryl Fruhling who resides at 915 Pine Road, and who is Ms. Millar's aunt. Ms. Millar grew up at 915 Pine Road, and has lived there for a large part of her life. Ms. Fruhling is home 90% of the time as she works from the home.

Ms. Fruhling is opposed to the application as she is concerned about increased noise from the Chesaco operation. At present she hears amplified voices and noise. She believes the noise will continue and increase in velocity and proximity. She is also concerned about additional traffic which the expanded use will bring to Pine Road, which is a dead-end road. She lives in an established residential community, one which contains numerous children, and one which will be impacted adversely by the proposed rezoning.

Next testified Mary E. Byrne who lives at 705 Oak Road. Ms. Byrne lives in the second house from Pine Road, and also works at home. Ms. Byrne is opposed to the proposal as Pine Road is narrow, with no shoulders. She believes that increased traffic will negatively impact Pine Road and residents of Pine Road. Ms. Byrne also owns additional building lots next to her home, and hopes that her grandchildren may wish to move there. She believes the use will negatively impact the desire of people to continue to reside in her neighborhood. Pine Road itself is about one mile long. Buses cannot use Pine Road; children must be driven to Route 40 and Pine Road. She believes any additional traffic at that location will potentially create a safety problem. Primarily, she is concerned about increased traffic and noise.

Next testified Janet Millar of 915 Pine Road. Ms. Millar is opposed to the request and hopes there will be no more building in her area. No pedestrian walkways exist along Pine Road, and many children use Pine Road for recreation. More people are coming into the area and will be attracted to the area because of the expanded use of Chesaco. She is worried about the increased crime and noise.

Next testified Rick Kummer of 808 Pine Road. Mr. Kummer is particularly concerned about the negative environmental impact of the proposal, particularly increased storm water flow and erosion. Mr. Kummer identified a series of photographs of various aspects of the neighborhood which he believes will be negatively impacted by the proposal.

Next testified in opposition John Kuta of 102 Rayner Lane. Mr. Kuta lives next door to the subject property, and believes he will be impacted by increased noise from and proximity to work yard speakers, new lights, and the increased water run-off from newly blacktopped areas. The removal of existing trees and installation of blacktop will also increase the temperature of the area.

Next in opposition testified Cecilia Sparr of 922 Pine Road. Ms. Sparr has been a resident of the area since 1993. She believes the proposed rezoning will bring additional people into the neighborhood. She objects to the lighting which will be installed on the newly rezoned area. She believes it is undesirable, and is a commercial intrusion into a residential neighborhood. She is also concerned about storm water generation and run-off from the property. She believes the rezoning will negatively impact the wildlife that exists in the area.

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Next in opposition testified Elizabeth Fink, a 37 year resident of 912 Pine Road. Ms. Fink testified that the Oak Avenue rubble fill is closed and she understands that no additional rubble is to be installed there.

### **APPLICABLE LAW:**

Section 267-12A of the Harford County Code states:

“A. *Application initiated by property owner.*

(1) *Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:*

(a) *The location and size of the property.*

(b) *A title reference or a description by metes and bounds, courses and distance.*

(c) *The present zoning classification and the classification proposed by the applicant.*

(d) *The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.*

(e) *A statement of the grounds for the application, including:*

[1] *A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.*

[2] *A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.*



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(f) *A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.*

(2) *Concept plan. A concept plan shall be submitted by the applicant at the time the application is filed. The concept plan shall illustrate the proposed general nature and distribution of land uses but need not include engineered drawings.”*

The Applicant requests a change in the zoning of the property. An initial presumption exists in the determination of whether any such request should be granted:

*“It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action.” See Wakefield v. Kraft, 202 Md. 136 (1953).*

It is a “rudimentary” principle of zoning review that there exists a:

*“. . . strong presumption of correctness of the original zoning and a comprehensive rezoning.” See Stratakis v. Beauchamp, 268 Md. 643 (1973).*

In considering an:

*“. . . application for reclassification, there must first be a finding of substantial change to the character of the neighborhood or a mistake in the comprehensive plan.” See Hardesty v. Dunphy, 259 Md. 718 (1970).*

Furthermore, case law dictates that legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of being based upon legally sufficient evidence to justify a finding of change to the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989)

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A large part of the testimony, evidence presented, and arguments made in this case by the Applicant were in support of its contention that the requested change in zoning from residential to commercial of the subject parcels would be in compliance with the 2004 Master Land Use Plan. Such an argument, however, even if supported by evidence of record, cannot justify a rezoning. The Applicant must meet a much more rigorous standard.

Case law is clear as to the standard which must initially be applied in any review of the requested piece-meal rezoning:

*“ . . . it is presumed that the original zoning was well planned, and designated to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justified the amendatory action.”* See Wakefield v. Kraft, 202 Md. 136, 96 A.2d 27 (1953).

Furthermore, even if a finding of mistake or change is made, a rezoning is merely permitted, not required. See Hardesty v. Dumphy, 259 Md. 718, 271 A.2d 152 (1970).

The Applicant’s original burden is a “production burden”, (discussed in Angellini v. Harford County, 144 Md. 369, 798 A.2d 26 (2002),) of demonstrating that a mistake occurred in the original zoning or last comprehensive rezoning (which would have been 1997), or of producing substantial evidence of change in the character of the neighborhood since that time. As can be seen by these briefly stated principles, compliance with the Master Land Use Plan is not an initial consideration.

### **Mistake in Original Zoning or Comprehensive Rezoning.**

The Applicant asserts two bases for its assertion of a mistake. Its first argument is stated as follows:

*“The R1 zoning of the property was a mistake since subsequent initiatives to stimulate commercial economic development in the neighborhood demonstrated the Council’s initial premises were incorrect.”* (See Page 2 of Applicant’s Brief.)

In support, the Applicant argues that the Harford County Council, since 1997, 1) adopted the Joppa/Joppatowne Community Plan; 2) enacted revisions to the Master Land Use Plan in 2004; 3) designated U.S. Route 40, Maryland Route 24, and Maryland Route 755 as an enterprise zone; and 4) designated U.S. Route 40 as a Commercial Revitalization District.

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In other words, the Applicant argues that in 1997 the property should have been zoned B3, as B3 would be more consistent with the subsequently enacted initiatives. Or, put another way, the Applicant argues that the Council was wrong in 1997 by not anticipating what it would do over the next 7 years.

However, when the details and nature of the specific development initiatives are examined, it can be seen that the Applicant's argument fails.

Except for Parcel 1053, no persuasive evidence was presented that the continued designation of the remaining subject parcels as R1 is inconsistent with the 2003 Joppa/Joppatowne Community Plan.

These parcels lie outside the U.S. Route 40 Revitalization District, as conceded by the Applicant. Nowhere within the Joppa/Joppatowne Community Plan is noted the specific goal of rezoning to encourage the commercialization of the subject parcels.

Furthermore, a review of Map 2 of the Joppa/Joppatowne Community Plan demonstrates that most of the property proposed for rezoning is designated for residential purposes. It appears that only Parcel 1053 is designated for commercial use, and that is as a corporate office site.

Retaining the 1997 R1 zoning of all parcels except Parcel 1053 is, in fact, consistent with the Joppa/Joppatowne Community Small Area Plan incorporated into the 2004 Master Land Use Plan. Far from encouraging the complete commercialization of the U.S. Route 40 corridor, the Joppa/Joppatowne Community Plan envisions a mix of uses:

*“The U.S. Route 40 Commercial Revitalization District within the Joppa/Joppatowne Community Planning Area extends from Little Gunpowder Falls to MD Route 152. The Plan supports a services of mixed-use centered at Joppa Farm Road, Joppa Road and MD Route 152, interspersed with low intensity uses and green space.” (See Page 14)*

Therefore, no inconsistency can be found between the R1 designation of Parcels 155, 1066 and 1062 in 1997, and the Joppa/Joppatowne component of the 2004 Master Land Use Plan.

The 2004 Master Land Use Plan itself, furthermore, is not inconsistent with the R1 Land Use designation currently enjoyed by the subject properties. As described by the Department of Planning and Zoning, as clearly shown by the Land Use Map of the Joppa/Joppatowne Community Area within the Harford County Master Land Use Plan (figure 62), and as further, and perhaps more clearly, shown on Attachment 6 to the Staff Report, Parcels 155, 1066 and 1062 are designated as a low intensity area. Low intensity is defined as follows:

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*“Low intensity – areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors offices and banks are examples of some of the non-residential use associated with this designation.”*

Parcel 1053 is treated somewhat differently, being given a classification of medium intensity, which allows more intensive commercial uses than does the low intensity zone. (See Page 42 of the 2004 Master Land Use Plan.)

Furthermore, the 2004 Master Land Use Plan finds no need to create additional commercial zoned property;

*“. . . studies indicate that areas defined for commercial use are adequate to meet the immediate and foreseeable future retail and service needs of the community.”* (See Page 216)

Quite apparently, the continued use of all parcels except 1053 for R1 use is in fact compatible with the designated low intensity zoning classification of the Harford County 2004 Master Land Use Plan. It is therefore difficult to fully understand the Applicant’s argument that the 2004 Master Land Use Plan supports the Applicant’s argument that R1 zoning for these parcels in 1997 was a mistake.

Furthermore, Master Plan compliance is generally not considered to be a justification for piece-meal rezoning:

*“. . . as we have said, a Master Plan is only a guide and is not to be confused with a comprehensive zoning, zoning map, or zoning classification. . . ”* See Pattey v. Board of County Commissioners, Md. 352 (1974).

The Applicant further contends in support of its argument that a mistake occurred in 1997, that the subsequent designation by the Harford County Council of an enterprise zone for U.S. Route 40, and the designation of the U.S. Route 40 Commercial Revitalization District, is evidence of a mistake in 1997.

However, testimony is again clear that the designated Enterprise Zone and the U.S. Route 40 Commercial Revitalization District does not include the subject parcels. The Applicant’s suggestion that the designation of these districts is evidence of the Council’s mistake in 1997 is simply not correct. There was no evidence presented that Council was in error in not including the subject property within its newly designated enterprise zone or Commercial Revitalization District (which, of course, could not be evidence of mistake in 1997 as the Districts were not then in existence), or that the creation of such a district, was evidence that the Council should

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have rezoned the subject property to B3 in 1997. The Applicant's suggestions to the contrary are simply without foundation.

The Applicant also argues that the current economic climate mandates uses and structures in commercial districts which have somehow "outgrown" the available land originally zoned for them in 1957. This is particularly apparent, says the Applicant, on the B3 parcels which front U.S. Route 40 and which are only 300 feet deep. (See Applicant's Brief, page 6.)

The Applicant argues that other commercial strip zoned property along U.S. Route 40 has greater depth. Strip zoning as imposed in 1957 has "restricted efforts to redevelop on the south side of U.S. Route 40 between Joppa Road and MD Route 152." However, and unfortunately for the Applicant's position, there is simply no evidence to support this assertion, other than the Applicant's desire to expand its recreational vehicle operation. The lack of additional commercial space poses a difficulty for the Applicant. No evidence was presented, however, that this somehow creates a development problem along U.S. Route 40 or is indicative of a greater problem in the area, or, in the final analysis, of a mistake in 1997.

In summary, it cannot be found that the Harford County Council made a mistake in 1997 (or 1957) in not changing the zoning of the subject parcels to B3 in light of subsequent land use initiatives. The legislatively mandated process of the Harford County Council in developing the 2004 Master Land Use Plan was not an unexpected process in 1997. Indeed, proper land planning is an on-going process and change is expected. An argument that the Council failed to anticipate future land planning decisions, and as a result made a mistake in 1997, is simply fallacious.

As its second argument, the Applicant suggests that Council made a mistake in 1997 in maintaining the R1 zoning of Parcel 1053 as the Council was not then aware of the extensive wetlands on Parcel 1053 at that time.

Based on wetland surveys performed subsequent to 1997, the Applicant argues, it was determined that of the 8.87 acres of Parcel 1053, approximately 2.88 acres to the south side of this parcel are unusable wetlands. As a result, the portion on Parcel 1053 which is suggested for rezoning to B3 is not and cannot be connected to other R1 parcels in the area and access cannot be through these residential parcels. The only physical access will be through the existing B3 zoned Chesaco property.

The Applicant suggests, convincingly, that had the extent of wetlands been known in 1997 the Council would not have zoned the subject part of Parcel 1053 as R1. The northern part of Parcel 1053 is isolated from the balance of that parcel, and from the residential areas to the rear, by the existing wetlands. Access would only be through the commercially used Chesaco properties to U.S. Route 40. The wetlands on Parcel 1053 will remain zoned R1 and will, in fact, function as a buffer for the residential development to the south and south west. This property, clearly, given its proximity to the commercial property along U.S. Route 40, and its isolation from the residential property behind it, should not have been zoned R1 in 1997, and could only

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have been done so as a result of a mistake of fact.

Supporting a finding of appropriate zoning for Parcel 1053 being B3 is the designation of the property in 2004 as corporate offices, which would require a commercial zoning.

Accordingly, it is found that the Applicant has met its burden in establishing a mistake in the zoning in 1997 of a portion of Parcel 1053 as R1. It is further found that the most appropriate zoning for the property is B3, as requested by the Applicant.

Nevertheless, the requesting rezoning may not be approved without an examination of the considerations of the requirements of Section 267-9I, Limitations, Guides and Standards, discussed as follows:

*(1) The number of persons living or working in the immediate area.*

The change from R1 to B3 will no doubt somewhat reduce the number of people who may eventually reside in the area, and will increase the number of people who work there. However, due to the buffering of the property from the residential district to the south and southwest, and the fact that access will be direct to U.S. Route 40 and not through residential districts, it is found there will be no adverse impact on the number of persons living or working in the immediate area if the requested rezoning is approved.

*(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

U.S. Route 40 is a major arterial. The rezoning of this property to allow commercial uses will not significantly impact the existing traffic, which is significant. Access will not be through interior subdivision roads, but will either access U.S. Route 40 through the existing Chesaco property, or will access Raynor Lane and then directly to U.S. Route 40. Accordingly, there will be no adverse impact on existing traffic conditions.

*(3) The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There should be no adverse fiscal impact on the County if the requested rezoning of Parcel 1053 is granted. As discussed, the zoning is consistent with the 2004 Master Plan.

*(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

Given the setback of the rezoned portion of Parcel 1053 from existing residential uses, there is no foreseeable impact on the residential community by any of these factors.

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- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office will provide police protection. Public water and sewer is available for the property.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

As discussed above, the change in zoning of a portion of Parcel 1053 to commercial, from existing residential uses, is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is in compliance with the Master Plan and related studies.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

It is found there will be no adverse environmental impact.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

### **Change in Character of the Neighborhood.**

The Applicant has defined a relatively large neighborhood for the subject parcels. That neighborhood extends from I-95 to the north, south to several hundred feet behind the commercial strip-zoning on U.S. Route 40, to Clayton Road and Clayton Business Park to the east and Joppa Road to the west. The Department of Planning and Zoning disagrees with Applicant's definition and instead defines the neighborhood to be those properties south of the CSX Railroad, east of Joppa Road, west of Magnolia Road (MD Route 152), and north of the intersection of Joppa Road and Trimble Road.

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Assuming the neighborhood as proposed by the Applicant is correct, the Applicant nevertheless fails to show a change sufficient to justify rezoning of the subject parcels.

The Applicant identifies thirty-five changes since 1997 which it asserts justifies a finding of change sufficient to justify the rezoning. However, despite extensive testimony concerning the effect of these changes, only one of the thirty-five was identified as an actual zoning change. That change was identified as No. 7 (issue 081), on Applicant's list of argued changes. All of the remaining suggested changes are, as suggested by the Department of Planning and Zoning, consistent with existing zoning.

In order to establish a change in the character of the neighborhood sufficient to allow a consideration of the requested piece-meal rezonings, the Applicant must present evidence demonstrating: A) The area which reasonably constitutes the "neighborhood" of the subject property. B) Changes which have occurred in the neighborhood since the original or last comprehensive zoning affecting the property. C) That these changes resulted in a change in the character of the neighborhood which would justify the reclassification to the category requested. See Montgomery v. Board of County Commissioners for Prince George's County, 256 Md. 597, 261 A.2d 447 (1970).

Of course, as previously noted, evidence of change must be "substantial".

However, changes to the neighborhood which were contemplated in the original comprehensive zoning are not such changes as would support a finding of substantial change in the character of the neighborhood. See Prince George's County Council v. Prestwick, Inc., 263 Md. 217, 282 A.2d 491 (1971). See also Buckel v. Board of County Commissioners of Frederick County, 80 Md. App. 305, 562 A.2d 1297 (1989).

Of the thirty-five changes suggested by the Applicant, only one is an actual rezoning, i.e., a change in the neighborhood which was not contemplated by the Council at the time of the 1997 rezoning. All other changes were consistent with the underlying zoning or principle permitted uses.<sup>1</sup> The one rezoning change identified by the Applicant, in its rather expansive neighborhood, does not support a finding of substantial change to the character of the neighborhood.

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<sup>1</sup> Even a special exception, if granted since 1997, is not evidence of substantial change in the character of the neighborhood since such uses are legislatively predetermined to be conditionally compatible uses permitted as a right in a particular zone. See Creswell v. Baltimore Aviation Services, Inc., 257 Md. 712, 264 A.2d 838 (1970).



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**CONCLUSION:**

Accordingly, it is recommended the requested rezoning of 5.99 acres of Parcel 1053 (Case No. 128), from R1 District to B3 District, be approved.

It is recommended that the requested rezonings of all other parcels (Case Nos. 126, 127 and 161) be denied.

Date: December 27, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on JANUARY 29, 2008.**